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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,704	11/25/2003	Howard M. Lee	018.0961.US.UTL	6308
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EXAMINER MANSFIELD, THOMAS L				
ART UNIT 3624		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/721,704

Applicant(s)

LEE, HOWARD M.

Examiner

THOMAS MANSFIELD

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-33, 42-63, 74-82 and 97-104 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-33, 42-63, 74-82 and 97-104 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 May 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Final Office action is in reply to the response to applicant's amendments filed 5 January 2009, response to notice of non-compliant amendment filed 15 March 2009, and the election/restriction requirement filed on 1 March 2010.
2. Claims 1, 5, 6, 13-18, 22, 23, 27, 28, 33-37, 41, 42, 51, 55, 56, 64-66, 74, 76-78, 83-87, and 91-98 had been previously amended.
3. Claims 1-104 were subject to election/restriction requirement.
4. Claims 14-33, 42-63, 74-82, and 97-104 (Group II) have been elected.
5. Claims 1-13, 34-41, 64-73, and 83-96 have been withdrawn from consideration without traverse.
6. Claims 14-33, 42-63, 74-82, and 97-104 are currently pending and have been examined.

Response to Amendment

Election/Restrictions

7. Claims 1-13, 34-41, 64-73, and 83-96 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1 March 2010. Applicant's election without traverse of Claims 14-33, 42-63, 74-82, and 97-104 in the reply filed on 1 March 2010 is acknowledged.
8. In the previous non-office action, new, corrected drawings were required in the instant application. Applicants have fulfilled the requirement by submitting new and corrected drawings.
9. Applicant's amendment necessitated the new grounds of rejection.

Response to Arguments

10. Applicant's arguments filed 5 January 2009 have been fully considered but they are not persuasive.
11. Applicant submits that Freedman et al. (Freedman) (WO 03/009175) does not teach or suggest in previously amended Claims 14, 42, 74, and 97: *(1) how to analyze an audio/video interaction of a customer agent interaction on order to obtain an estimate of the quality of service rendered by an agent to a customer* [see Remarks page 29, last paragraph];
12. With regard to argument (1), the Examiner respectfully disagrees. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *how to analyze an audio/video interaction of a customer agent interaction on order to obtain an estimate of the quality of service rendered by an agent to a customer*, is not recited specifically in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.
13. Additionally, it is noted that the recitation of Claim 14 in the Remarks on page 27, last paragraph through page 28, first paragraph and the recitation of Claim 42 in the Remarks on page 28, second paragraph are not specifically recited the same as in the claims.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

15. Claims 14, 16-21, 24-33, 42, 44-49, 52-63, 78-82, and 97-104 are rejected under 35 U.S.C. 102(e) as being anticipated by Freedman et al (Freedman) (U.S. Pub. No. 2004/0249650).

With regard to Claim 14, Freedman teaches *an apparatus* (see at least the Abstract) comprising:

- *a storage device (system), the storage device is configured to receive and store a plurality of storable representations of audio/video (audio, video) interactions (capturing and analyzing customer interactions, in real time) between agents (agent, client) of a business (business) and customers (customer, businesses) of the business, the storable representations are analyzed by analysts to estimate analysis data, wherein the analysis data is related to a quality of service (Quality Management) (see at least paragraphs 14-15 and 36-44);*
- *an analysts console (interaction capture and storage component for capturing interaction information), the analyst's console is configured to access the storage device and to facilitate the input of analysis data (designed to log, capture and store information), the analysis data representing an estimate of the quality of service rendered by the agents to the customers (to be able to capture, analyze and identify*

inefficiencies, malpractices, misconduct, pattern and customer or agent behavior, quality issues, cause of dispute, regulatory violations in real time, Quality Management) (see at least paragraphs 14-15 and 36-44).

With regard to Claim 42 and 78, Freedman teaches *an apparatus* (see at least the Abstract) *comprising:*

- *a receiver (system) configured to receive an audio/video (audio, video) interactions (capturing and analyzing customer interactions, in real time) between an agent (agent, client) of a business (business) and a customer (customer, businesses), the audio/video interaction is capable of being analyzed for service quality by analyst in real time (to be able to capture, analyze and identify inefficiencies, malpractices, misconduct, pattern and customer or agent behavior, quality issues, cause of dispute, regulatory violations in real time, Quality Management) (see at least paragraphs 14-15 and 36-44);*
- *a console (interaction capture and storage component for capturing interaction information), the console is configured to facilitate the input of analysis data (designed to log, capture and store information), the analysis data indicating a quality of service rendered by the agent to the customer after the agent's performance is analyzed by at least one analyst, wherein during the analyst's analysis of audio/video interaction, the analyst uses a criterion selected from the group consisting did the agent project a confident visual appearance, what effect did the agent's body language have on the customer, did the agent make sufficient eye contact with the customer, did the customer appear at ease, and did the customer appear to become upset during the course of the interaction (to be able to capture, analyze and identify inefficiencies, malpractices, misconduct, pattern and customer or agent behavior, quality issues, cause of dispute, regulatory violations in real time, Quality Management, interactions, reactions of the contact center agent, pleasantries,*

abusive behavior, emotion detection) (see at least paragraphs 14-15, 36-44, and 75-78).

Examiner notes that the claimed contents of Claim 42 and 78 amount to non-functional descriptive material that do not functionally alter the claimed method. The recited steps would be performed in the same manner regardless of what data is contained in a group of criteria. Thus, the prior art and the claimed invention have identical structure and the claimed descriptive material is insufficient to distinguish the claimed invention over the prior art. *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *MPEP* 2106.

With regard to Claims 16, 44, 79, and 101, Freedman teaches *wherein an/the agent and a/the customer are face-to-face during the audio/video interaction* (face-to-face meetings) (see at least paragraph 44).

With regard to Claims 17, 45, 80, and 102, Freedman teaches *wherein an/the agent and a/the customer are not face-to-face during the audio/video interaction* (Email, Facsimile, Traditional mail, telephone) (see at least paragraph 44).

With regard to Claims 24, 25, 52, and 53, Freedman teaches: *informing the agent of at least one agent performance element that could be performed even better* (in order to improve their skills) (see at least paragraphs 37, 81-83); *notifying the agent of at least one agent performance element that was well performed* (performance of agents) (see at least paragraphs 37, 81-83).

With regard to Claims 26 and 54, Freedman teaches *providing a training tip for the agent on the analyzing* (the system is triggered to send an e-learning tutorials to specific agents in order to improve their skills) (see at least paragraphs 37, 81-83).

With regard to Claims 18-19 and 46-47, 81-82, and 103-104, Freedman teaches *wherein a device is used to obtain the storable representation of the audio/video interaction* (Video interaction 62), *wherein the device is selected from the group consisting of a video-telephone* (telephone or Internet video-conference), *a workstation, an audio/video monitoring system, a lap-top computer* (agent computing device), *a personal data assistant, a tablet computer and a wearable computer* (see at least paragraphs 44-46).

With regard to Claims 20 and 48, Freedman teaches *a communication link to facilitate communications between the first geographic area and the second geographic area* (World Wide Web (web) environments) (see at least paragraph 80).

With regard to Claims 21 and 49, Freedman teaches *wherein the communications link further comprises a satellite* (see at least paragraph 80).

With regard to Claims 27, 28, 55, and 56, Freedman teaches *a data base comprising a plurality of analysis data collected from an agent(s)* (database for storing interactions) (see at least paragraph 15).

With regard to Claims 29-33 and 59-62, Freedman teaches *wherein the first geographic area is the United States of America and the second geographic area is selected from the group consisting of Botswana, Fiji, India, Kenya, Liberia, Nigeria, South Africa, Swaziland, Tanzania and the Philippines, external to the United States of America, Argentina, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Republic of the Congo, Mexico, Nicaragua, Panama, Uruguay, Algeria, Rwanda, Senegal, France and Haiti* (database may be located remotely to the organization and accessed via local or wide area networks) (see at least paragraphs 38 and 80).

With regard to Claim 57, Freedman teaches *wherein the audio/video interaction further comprises a telephone call* (interactions are telephone conversation) (see at least paragraphs 14 and 44).

With regard to Claim 58, Freedman teaches *wherein the audio/video interaction further comprises an email message* (an e-mail arrived in association with the call) (see at least paragraphs 14 and 44).

With regard to Claim 63, Freedman teaches *wherein the audio/video interaction results in the transfer of a debit or credit* (payment terms) (see at least paragraph 65).

With regard to Claim 97, Freedman teaches an apparatus comprising:

- *a processor; a reader coupled with the processor; a data input device configured with the processor to accept input from an analyst; a compute readable medium containing executable computer program instructions, which when executed by the apparatus, cause the apparatus to perform a method comprising (system): accessing a storable representation of an audio/video interaction between an agent of a business and a customer (to be able to capture, analyze and identify inefficiencies, malpractices, misconduct, pattern and customer or agent behavior, quality issues, cause of dispute, regulatory violations in real time, Quality Management (QM) Evaluation 206, rule based analysis engine 218) (see at least paragraphs 14-15, 36-44, and 75-78);*

- *playing the storable representation* (Query Playback and Retrieval **216**) wherein during the playing the analyst observes the storable representation and performs an evaluation of the visual aspects of the audio/video interaction to determine analysis data that are related to a quality of service provided to the customer by the agent (transactional sessions) (see at least paragraph 44);
- *receiving the analysis data and storing the analysis data into a database* (saved as a content data item **230** later to be further analyzed by the content-analysis rule base engine **218** to produce a result) (see at least paragraph 42).

With regard to Claim 98, Freedman teaches *a data display* (graphical display content) configured with the processor to facilitate determining the quality of service within the audio/video interaction (see at least paragraph 44).

With regard to Claim 99, Freedman teaches *wherein the data input device is selected from the group consisting of a computer mouse, a pointing device, a keyboard, and a microphone* (see at least paragraph 11).

With regard to Claim 100, Freedman teaches *wherein the audio/video interaction further comprises data associated with the audio/video interaction and the analyst uses the data during the evaluation of the audio/video interaction* (real time content analysis) (see at least paragraphs 43-44).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 15, 22, 23, 43, 50, 51, and 74-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freedman et al (U.S. Pub. No. 2004/0249650) as applied to Claims 14, 16-21, 24-33, 42, 44-49, 52-63, 78-82, and 97-104 above in view of Rudnik et al. (Rudnik) (U.S. 2005/0015286 and in further view of Official Notice.

With regard to Claims 22-23 and 50-51, Freedman teaches *to provide a statistically relevant sample of the agent's audio/video interactions* (statistics, statistics generation **208**, specific statistical vector features) (see at least paragraphs 38, 41, and 48). However, Freedman does not specifically teach *wherein the analyzing occurs at a frequency that requires at least one of an agent's audio/video interactions per day to be analyzed for a quality of service, wherein the analyzing occurs at a frequency selected from the group consisting of at least once per day, more than once per day and a frequency sufficient to provide a statistically relevant sample of the agent's audio/video interactions*. Rudnik teaches *wherein the analyzing occurs at a frequency that requires at least one of an agent's audio/video interactions (interactions) per day to be analyzed for a quality of service (quality management), wherein the analyzing occurs at a frequency selected from the group consisting of at least once per day, more than once per day and a frequency sufficient (interactions per week/day/month) in analogous art of advanced quality management and recording solutions for the purposes of, "interactions to be recorded or flagged for the purposes of quality management"* (see at least paragraph 48).

It would have been obvious to one having ordinary skill in the art to modify the method of Freedman to include the teaching of Rudnik for the benefit of providing statistical analysis for quality service and metadata collection (Rudnik, paragraph 48).

With regard to Claims 15, 43, and 74, Freedman teaches *an apparatus*, (see at least the Abstract) *comprising*:

- *a plurality of storable representations of audio/video interactions arising between an agent of a business and customers, wherein the customers are in a first geographic area* (see at least paragraphs 14-15 and 36-37, 80);
- *a communications link to transfer the storable representations to a second geographic area* (see at least paragraphs 14-15 and 36-37, 80);
- *a storage device coupled with the communications link, to store the storable representations, wherein the storable representations are capable of being analyzed (analyzing more than one interaction, Computer Telephony Integration (CTI) information, capturing and analyzing customer interactions, in real time) for a quality of service in the second geographic area by analysts, (inefficiencies, misconduct, behavior, quality issues, calibrated according to the interactions 281 types, Quality Management, for the purposes of quality management), wherein the analysts observe the storable representations and perform evaluations of the visual and audio aspects of the audio/video interactions to determine analysis data that are related to a quality of service provided to the customers* (see at least paragraphs 36-40 and 42-44);

Freedman and Rudnik do not specifically teach *wherein the second geographic area is subject to a geographic wage attenuator and both geographical areas are part of the same country/share at least one language in common*. However, Official Notice is taken that business conducted between different geographic locations subject to cost differentiation specific to that location was old and well-known measures in the art at the time of the invention. It would have been obvious to one having ordinary skill in the art to modify the method of Freedman to include the teaching of Official Notice for the benefit of conducting business on a national/world scale and adjusting the pricing, cost, or salary based on off-shoring methods or the locality pay.

With regard to Claim 75, Freedman teaches *wherein at least one of the agent's audio/video interactions per day is analyzed for service quality in the second geographic area (World Wide Web (web) environments)* (see at least paragraph 80).

With regard to Claim 76, Freedman teaches *wherein analyzed for a quality of service includes scoring the agent according to predefined criteria* (pre-defined criteria, in the QM evaluation form the sub-section scoring the agent's courtesy is automatically filled by the value "0") (see at least paragraphs 83 and 89).

With regard to Claim 77, Freedman teaches *scoring the agent according to criteria developed by sampling agent performance at least once a day on a substantially continuing basis* (pre-defined criteria, in the QM evaluation form the sub-section scoring the agent's courtesy is automatically filled by the value "0") (see at least paragraphs 83 and 89).

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:
- Gauch (U.S. 6,246,803) discloses a real-time feature-based video stream validation and distortion analysis system using color moments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THOMAS MANSFIELD whose telephone number is (571)270-1904. The examiner can normally be reached on Monday-Thursday 8:30 am-6 pm, alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on 571-272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M./
Examiner, Art Unit 3624

5 June 2010
Thomas Mansfield
/Jonathan G. Sterrett/
Primary Examiner, Art Unit 3623